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USTR FOR JENNIFER GROVES AND JASON BUNTIN

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SUBJECT: SAUDI ARABIA SPECIAL 301 REVIEW: POST INPUT

REF: SECSTATE 9475

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Summary  
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¶1. Despite continuing deficiencies, Saudi Arabia improved its protection of intellectual property rights (IPR) in the preceding year. The Violations Review Committee increased its productivity and transparency considerably under new leadership, the SAG offered a counter-proposal to USTR's Exclusive Marketing Rights Proposal for protecting the IPR rights of certain orphan pharmaceutical products and has begun to license software for its PCs. The SAG also continues to eagerly participate in and request training from the USG to improve its capacity to protect and enforce IPR. Officials from USTR, USPTO and the Copyright Office visited Riyadh for four days in February 2008 and met with Saudi officials from various agencies involved in IPR. These Saudi officials seized the opportunity to explain their role in protecting and enforcing IPR in the Kingdom, and to provide detailed, specific input regarding self-funded training programs they believe the USG can offer to enhance their ability to protect and enforce IPR. The Saudi IPR Committee also agreed to establish an IPR Coordination Group in February 2008. An IPR Coordination Group, as proposed in Saudi Arabia's 2007 Special 301 Initiative Action Plan, should include representatives of the USG and the SAG, as well as private industry rights holders, and meet regularly to discuss IPR protection and enforcement.

¶2. Meanwhile, industry losses due to IPR infringement remain significant even as industry has grown increasingly impatient with Saudi Arabia's lack of progress on transparency and enforcement issues. Specifically, Saudi Arabia has yet to develop a system to ensure that rights holders are informed of legal actions taken on their behalf, to apply deterrent penalties to IPR violators, and to proactively investigate and shut down retail sites which engage in the sale of infringing goods. Rights holders agree that problems with communication and enforcement center on the Ministry of Culture and Information. Other parts of the Saudi government have better records of understanding and enforcing IPR standards and complying with IPR commitments.

¶3. Post recommends that Saudi Arabia remain on the Watch List, but not be elevated to the Priority Watch List. Saudi Arabia progressed in implementing its IPR obligations during the preceding year and continues to seek opportunities to cooperate with the USG to work to overcome its deficiencies.

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COPYRIGHT ENFORCEMENT  
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¶4. Despite recent improvements, prosecution and punishment

of copyright violators remains the most deficient area in the SAG's intellectual property rights (IPR) regime. Primary responsibility for ensuring copyright protection lies with the Ministry of Culture and Information (MOCI), whose responsibilities include the investigation of fraudulent activity, as well as the initial judicial review of all copyright violation cases. Rights holders criticize the MOCI's continued failure to ensure the transparent judicial review of IPR cases, to apply deterrent penalties to IPR violators, and to proactively investigate and shut down retail sites which engage in the sale of infringing goods. Severe resource constraints hamper the MOCI's ability to make headway on these issues. For example, the MOCI's investigative staff in Riyadh is comprised of 3 inspectors (down from 5). However, the MOCI reports to post that it has requested additional budgetary resources from the Ministry of Finance to increase its investigative capacity.

15. Initial judicial review of all copyright violation cases is conducted by the MOCI's Violations Review Committee (VRC), a semi-judicial authority that has the ability to issue fines of up to 100,000 Saudi Riyals or refer more serious cases to the Board of Grievances. Though it continues to be staffed by members who hold other full-time jobs at the Ministry, the VRC's productivity increased dramatically upon the appointment of a new Chairman in September 2007. While industry sources told post the VRC issued 13 rulings in 2006, earlier this month the VRC reported that it had issued 275 rulings under its new leadership. According to industry sources the new Chairman is also generally willing to consult with rights holders.

16. Despite these marked improvements at the VRC, problems communicating information about cases between the VRC and rights holders persist. These communication issues could be effectively addressed by the "electronic gateway" by which the SAG proposes to publish VRC decisions on the MOCI's web site. MOCI officials told post earlier this month that a budget for the electronic gateway had been approved and a private company contracted to design it. The failure to issue deterrent penalties also continues to be a problem. The VRC did not refer any cases to the Board of Grievances this year, and post is unaware of any Saudi court issuing a prison sentence for an IPR violation, although Saudi legislation now provides for such a penalty.

17. Despite King Abdullah's issuance of a circular directing government ministries to legalize their software use following the International Intellectual Property Alliance's visit to the Kingdom in 2006, industry maintains that the push for legalization has enjoyed only modest success. For example, Microsoft estimates that the SAG uses about 500,000 PCs with Microsoft software, but has licensed only 29,000 of those computers. In 2007 the Ministry of Interior licensed Microsoft software for 7,000 of its estimated 50-70,000 PCs, and the MOCI (the ministry to which VRC is attached) licensed software for 3,000 of its PCs. While these agreements cover a small percentage of the PCs that Microsoft estimates the SAG uses, they are significant since Microsoft had not signed any license agreements with the SAG prior to 2007. Further, the SAG disputes industry's estimates of its rate of legal software use. It asked all government ministries to investigate and report back whether their computers ran only licensed software. SAG officials report that this study demonstrated that about 90% of government PCs run only legal software. Industry dismisses this self-certification as inadequate and inaccurate. Microsoft believes that legalization problems persist for bureaucratic and budgetary reasons, and suggests that the SAG designate funds for all ministries to use to legalize rather than addressing the issue ministry by ministry or pooling the ministries' technology budgets together.

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PATENT ENFORCEMENT  
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18. The SAG offered a counter-proposal to USTR's Exclusive

Marketing Rights Proposal (EMR Proposal) in February 2008. USTR proposed that the SAG grant temporary exclusive marketing rights to pharmaceutical products that lost patent protection when Saudi Arabia transitioned to a new TRIPS-compliant patent law in 2004 through such products' patent expiration in the US or the European Union (whichever is sooner). Products that had applications for patents pending under the old law (and enjoyed patent protection while their applications were pending) were reviewed as new cases under the new law. These products were then denied patents because the SAG determined that they were not "novel" because they had been publicly patented in other jurisdictions more than a year before their cases were considered in Saudi Arabia. While industry was reluctant to provide a definitive list of these products for fear of inadvertently omitting a product, the SAG required such a list to consider the EMR Proposal, thus USTR forwarded a list of more than 70 products compiled by industry in October 2007.

¶9. The SAG analyzed this list of more than 70 products and winnowed it down to about 40. It accomplished this by eliminating both products for which patent applications were never filed or were dropped or refused because of a failure to pay fees or provide requested information, and products that were granted patents or were still being considered for patents. The SAG further proposes excluding products for which a generic is or becomes available in the US, the European Union or the Kingdom, and limiting exclusive marketing rights to those products that applied to register with the Saudi Ministry of Health (MOH) under the old patent law. This counter-proposal seems only to regard listed pharmaceuticals rather than defining a category, and the officials presenting the counter-proposal made it clear that any agreement would have to be approved by the Council of Ministers. USTR is reviewing the counter-proposal and consulting with industry, but this response marks progress for an issue that has proved intractable for years.

¶10. To post's knowledge, Lipitor is the only pharmaceutical in the category described in Paragraph 8 for which the MOH has subsequently licensed manufacture of a generic equivalent. Pfizer, Lipitor's manufacturer, is appealing the decision to deny Lipitor a patent, and argues that the MOH's issuance of a license to manufacture generic Lipitor violates Saudi Arabia's WTO obligations. Under Saudi Arabia's Protocol of Access to the WTO, the Saudi Arabian representative stated that if a pharmaceutical patent application was pending, the MOH would not register a generic, unless there was no possibility that the patent would be granted. In discussions with post SAG officials have agreed in principle that a license to produce a generic version of a pharmaceutical should not be issued while the patent rejection of that precise pharmaceutical is being appealed, but the license to manufacture a generic equivalent of Lipitor has not been revoked. Lipitor's status in the Kingdom would not seem to be remedied by the SAG's counter-proposal because the generic is available in Saudi Arabia.

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LEGISLATION AND INTERNATIONAL AGREEMENTS  
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¶11. There is agreement among Saudi officials and rights holder groups that current IPR laws provide the necessary authority for the SAG to investigate, arrest and penalize IPR violators. Post no longer considers Saudi legislation as an impediment to IPR enforcement. However, Saudi Arabia's 2007 Special 301 Initiative Action Plan recommends that Saudi Arabia ratify and implement the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty (the WIPO Treaties). SAG officials met with WIPO in Geneva in October 2007 and are still in the process of engaging a legal advisor to explain the content of the WIPO Treaties and what the SAG's responsibilities would be if it were to ratify them.

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TRAINING AND COOPERATION  
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¶12. Improving the SAG's performance on transparency and enforcement will require building knowledge and expertise across Saudi ministries in officials ranging from customs and copyright inspectors to patent examiners and judges. While Saudi nominees have attended a number of week-long US Patent and Trademark Office (USPTO) academies in Washington, D.C. in the preceding year, SAG officials tell post that most of their employees that speak English well have already completed USG training. They are eager for their employees that only speak Arabic to benefit from this professional development opportunity as well.

¶13. SAG officials demonstrated this desire during a recent four day visit to Riyadh by officials from USTR, USPTO and the Copyright Office. These USG officials met with Saudi officials from the MOCI, the Ministry of Commerce and Industry, the Customs Authority, the King Abdulaziz City for Science and Technology and the Board of Grievances. Each of these institutions seized the opportunity to explain their role in protecting and enforcing IPR in the Kingdom, and to provide detailed, specific input regarding self-funded training programs they believe the USG can offer to enhance their ability to protect and enforce IPR. Delegation members are now designing proposals for various Saudi-specific, Arabic-language training programs that should pay dividends in enhanced IPR enforcement and protection in the Kingdom. The Saudi IPR Committee also agreed to establish an IPR Coordination Group during this visit. An IPR Coordination Group, as proposed in Saudi Arabia's 2007 Special 301 Initiative Action Plan, should include representatives of the USG and the SAG, as well as private industry rights holders, and meet regularly to discuss IPR protection and enforcement.

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RECOMMENDATION  
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¶14. Post recommends that Saudi Arabia remain on the Watch List, but not be elevated to the Priority Watch List. Saudi Arabia progressed in implementing its IPR obligations during the preceding year and continues to seek opportunities to cooperate with the USG to work to overcome its deficiencies.  
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